IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.890 OF 2005
IN
NOTICE OF MOTION NO.1905 OF 2005
IN
SUIT NO.1747 OF 2005

Raymond Limited .. Appellant

v/s.

S.P.Mehta, Proprietor of
M/s.Baba Cloth .. Respondent

Mr.Virag Tulzapurkar with Mr.Salil Shah i/by
M/s.Rajani Associates for the appellant.

Mr.Simil Purohit with Mr.I.J.Nankani i/by
M/s.Nankani & Associates for the respondent.

CORAM : R.M.LODHA AND
D.G.KARNIK, JJ.

DATED : 13th December, 2005

P.C.

In Appeal No.889 of 2005, we passed the following order today:-

"4. The appeal has been filed by the original plaintiff aggrieved by the order of the learned motion Judge refusing to grant ad-interim relief. Since the notice of motion is pending before the learned motion Judge, we do not intend to go into the diverse aspects on merits at length lest it must prejudice the consideration of the notice of motion on merits. Suffice, however, to say that, prima facie, the plaintiff has been able to show that the word 'Raymond' written in stylised/artistic manner is an artistic work under the Copyright Act, 1957 and that the plaintiff is the owner of the copyright in that artistic work. It is also registered under the Copyright Act. In our view, therefore, the plaintiff is entitled to grant of ad-interim injunction restraining the defendant from infringing the plaintiff's registered copyright bearing registration No.A-52427/93 using the word "Raymond" as part of any signage/board on his shop. Merely because

the defendant sells the goods manufactured by the plaintiff, that would not entitle him to use the word 'Raymond' written in stylised/artistic manner in which the plaintiff has copyright.

5. We, accordingly, dispose of the appeal by the following order:

ORDER

During the pendency of the notice of motion, the defendant by himself, his employees, servants and agents is restrained by an order of injunction from in any manner infringing the plaintiff's registered copyright bearing Registration No.A-52427/93 dated December 20, 1993 (Exhibit 'D' to the plaint) using the word "Raymond" as part of any signage/board on his shop in any manner whatsoever.

6. We clarify that the notice of motion shall be heard and decided by the learned motion Judge on its own merits and neither the impugned order nor our order passed today in the appeal shall influence the decision in the notice of motion.

The learned counsel for the appellant prays for stay of this order. We are not inclined to grant such prayer. Oral prayer for stay is rejected."

2. Ordinarily we would have disposed of this appeal in the same manner but the peculiar facts obtaining herein disentitle the plaintiff from the grant of any ad-interim relief.

3. The learned counsel for the respondent-defendant submitted that the defendant sells the original goods of 'Raymond' and for that purpose, he has been releasing advertisement in the newspapers from time to time since the year 2003 but the suit has been filed now in the year 2005.

He submits that this aspect distinguishes the present appeal from appeal No.889 of 2005.

4. Mr.Virag Tulzapurkar, the learned counsel for the plaintiff relying upon the judgments of the Supreme Court (i) M/s.Bengal Waterproof Limited v. M/s.Bombay Waterproof Manufacturing Company and another, AIR 1997 SC 1398 and (ii) Midas Hygiene Industries P.Ltd. & anr. v. Sudhir Bhatia & ors., 2004(28) PTC 121, submitted that the infringement of copyright having been made out, prima facie, the injunction ad-interim and interim must follow and merely because for the earlier advertisements, no action was taken by the plaintiff that should not debar the plaintiff from grant of injunction.

5. In our considered view, for the purposes of ad-interim relief, this case is distinguishable from the appeal No.889 of 2005. It is apparent from the record that the defendant has been selling the goods of Raymond and for that purpose, he has been releasing the advertisement in the newspapers from time to time since the year 2003. It is true that the correspondence between the plaintiff and the defendant has been going on from time to time in this regard. On the one hand the plaintiff has been calling upon the defendant to cease and desist from infringing the plaintiff's copyright in the artistic and literary work "Raymond", on the other

hand, the defendant responded to such notices denying an infringement and continue to advertise in the newspapers. The legal action, however, has been initiated by the plaintiff in the month of June, 2005. No doubt that infringement of copyright or infringement of trade mark gives rise to the cause of action every time such infringement takes place but the conduct of the aggrieved party in not pursuing the legal remedy for almost two years despite the fact that the defendant has been releasing the advertisements in the newspapers from time to time, in our considered opinion, has disentitled the plaintiff from the grant of any ad-interim relief. The judgment of the Supreme Court in the case of M/s.Bengal Waterproof Limited is not applicable to the facts of the present case in so far as the prayer for ad-interim relief is concerned. Similarly, the judgment of the Supreme Court in Midas Hygiene Industries Pvt.Ltd. also cannot be applied to the facts of the case. In both these cases cited at bar by Mr.Tulzapurkar, the adoption of the mark by the defendant was prima facie, held to be dishonest. In the present case, admittedly, the defendant has been dealing with the original goods of the plaintiff amongst other brands. Even it is not the allegation of the plaintiff that the defendant is using the mark "Raymond" for the goods belonging to the parties other than Raymond. As a matter of fact the officers of the plaintiff company visited the

defendant's shop to check and verify whether the goods bearing the mark "Raymond" are the original goods and it was found by the plaintiff's officers that the goods sold by the defendant were the goods of the plaintiff and not of third parties.

6. We are satisfied that in the peculiar facts of this case where the plaintiff did not initiate legal action for two years, the plaintiff is not entitled to grant of any ad-interim relief.

7. Appeal is dismissed in limine.

8. Needless to say that notice of motion shall be heard and disposed of by the learned motion Judge on its merits and our order nor the impugned order shall influence the decision in the notice of motion.

Hearing of the notice of motion is expedited.

(R.M. LODHA, J.)

(D.G. KARNIK, J.)